

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, . CRIMINAL NO. 1:15-cr-10338-FDS
Plaintiff . ALL DEFENDANTS

v. . BOSTON, MASSACHUSETTS
OSCAR NOE RECINES-GARCIA . JUNE 2, 2016
et al, .
Defendant .
.

TRANSCRIPT OF INTERIM STATUS CONFERENCE
BEFORE THE HONORABLE F. DENNIS SAYLOR, IV
UNITED STATES DISTRICT COURT JUDGE
&
BEFORE THE HONORABLE M. PAGE KELLEY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: UNITED STATES ATTORNEY'S OFFICE
BY: Peter K. Levitt, AUSA
One Courthouse Way
Suite 9200
Boston, MA 02210
617-748-3355
peter.levitt@usdoj.gov

UNITED STATES ATTORNEY'S OFFICE
BY: Christopher J. Pohl, AUSA
One Courthouse Way
Suite 9200
Boston, MA 02210
617-748-3963
christopher.pohl@usdoj.gov

UNITED STATES ATTORNEY'S OFFICE
BY: Rachel Y. Hemani, AUSA
One Courthouse Way
Suite 9200
Boston, MA 02210
617-748-3141
rachel.hemani@usdoj.gov

For Defendant 1, Michael L. Tumposky, Esq.
Oscar Noe Recines-Garcia Hedges & Tumposky
a/k/a Psycho 15 Broad Street

1 Boston, MA 02109
2 617-722-8220
3 tumposky@htlawyers.com
4 via telephone
5
6 For Defendant 2, Paul J. Garrity, Esq.
7 Julio Esau 14 Londonderry Road
Avalos-Alvarado Londonderry, NH 03053
5 a/k/a Violento 603-434-4106
garritylaw@myfairpoint.net
8
9 For Defendant 3, Joan M. Griffin, Esq.
10 German Hernandez-Escobar P.O. Box 133
a/k/a Terible Dublin, NH 03444
11 617-283-0954
griffin@lawjmg.com
12
13 For Defendant 4, Raymond A. O'Hara, Esq.
Noe Salvador 1 Exchange Place
Perez-Vasquez Worcester, MA 01608
11 a/k/a Crazy 508-831-7551
oharalaw@hotmail.com
14
15 Defendant 5, Bernard Grossberg, Esq.
16 Santos Portillo-Andrade One McKinley Square
a/k/a Flaco Third Floor
17 Boston, MA 02109
617 737-8558
bgrossberg@grossberglaw.com
18
19 Defendant 6, Michael J. Callanan, Esq
Herzzon Sandoval Law Office of Michael J. Callanan
17 a/k/a Casper Suite 2A
111 Everett Ave.
Chelsea, MA 02150
617-884-2130
callananlaw@gmail.com
20
21 Defendant 8, Kevin L. Barron, Esq.
Jose Hernandez-Miguel Kevin L. Barron
21 a/k/a Muerto 5 Lexington St No. 3
Charlestown, MA 02129-3114
617-407-6837
kevinbarronesq@gmail.com
22
23
24 Defendant 9, Derege B. Demissie, Esq.
Edgar Pleitez Demissie & Church
a/k/a Cadejo 929 Massachusetts Avenue
25 Suite 01

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508.984.7003

| | | |
|----|---------------------------------------|--|
| 1 | Cambridge, MA 02139 | |
| 2 | 617-354-3944 | |
| | dd@demissiechurch.com | |
| 3 | Defendant 10, Christian Alvarado | John A. Amabile, Esq. Amabile & Burkly, P.C. 380 Pleasant Street Brockton, MA 02401 617-559-6966 john.amabile@amabileburkly.com |
| 4 | <i>a/k/a</i> Catracho | |
| 5 | Defendant 11, Cesar Martinez | Stanley W. Norkunas, Esq. 11 Kearney Square Howe Building, Suite 202 Lowell, MA 01852 978-454-7465 attyswn@msn.com |
| 6 | <i>a/k/a</i> Cheche | |
| 7 | Defendant 14, Erick Argueta Larios | Thomas J. Iovieno, Esq. 345 Neponset Street Canton, MA 02021 617-464-3300 tjilaw@yahoo.com |
| 8 | <i>a/k/a</i> Lobo | |
| 9 | Defendant 15, Luis Solis-Vasquez | Ian Gold, Esq. Attorney at Law 2 Clock Tower Place Suite 260 Maynard, MA 01754 617-297-7686 ian.gold@iangoldlaw.com |
| 10 | <i>a/k/a</i> Brujo | |
| 11 | Defendant 18, Joel Martinez | Peter L. Ettenberg, Esq. Gould & Ettenberg 370 Main Street Worcester, MA 01608 508-752-6733 pettenberg@gouldettenberg.com <i>via telephone</i> |
| 12 | <i>a/k/a</i> Animal | |
| 13 | Defendant 19, Jose Rene Andrade | Inga Parsons, Esq. Inga Parsons Attorney at Law 3 Besson Street, #234 Marblehead, MA 01945 781-581-2262 inga@ingaparsonslaw.com |
| 14 | <i>a/k/a</i> Triste | |
| 15 | <i>a/k/a</i> Innocente | |
| 16 | Defendant 20, Hector Enamorado | James J. Cipoletta, Esq. Citizens Bank Building |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |

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| | | |
|----|--|---|
| 1 | a/k/a Vida Loca | Suite 307 385 Broadway Revere, MA 02151 781-289-7777 jcipoletta@comcast.net |
| 4 | Defendant 21, Henry Santos-Gomez | Daniel J. Cloherty, Esq. Collora LLP |
| 5 | a/k/a Renegado | 100 High Street |
| | a/k/a Pino | 20th Flr. |
| 6 | | Boston, MA 02110 |
| 7 | | 617-371-1000 dcloherty@collorallp.com |
| 8 | Defendant 22, Rafael Leoner-Aguirre | Keith S. Halpern, Esq. 572 Washington Street |
| 9 | a/k/a Tremendo | Suite 19 Wellesley, MA 02482 |
| 10 | | 617-722-9952 |
| 11 | | ksh@keithhalpern.com via telephone |
| 12 | Defendant 23, Hector Ramires | Tracy A. Miner, Esq. Demeo LLP |
| 13 | a/k/a Cuervo | 200 State Street Boston, MA 02109 |
| 14 | | 617-263-2600 tminer@demeollp.com |
| 15 | Defendant 24, Daniel Menjivar | Mark W. Shea, Esq. Shea & LaRocque |
| 16 | a/k/a Roca | Suite 103 929 Massachusetts Avenue |
| 17 | a/k/a Sitiko | Cambridge, MA 02139 617-577-8722 markwshea@gmail.com |
| 18 | | |
| 19 | Defendant 25, Angel Pineda | John R. Salsberg Law Office of John Salsberg |
| 20 | a/k/a Bravo | 221 Lewis Wharf |
| 21 | a/k/a Jose Lopez | Boston, MA 02110 617-523-7788 jrs@salsberglaw.com |
| 22 | | |
| 23 | Defendant 26, Jose Vasquez | James H. Budreau, Esq. Bassil, Kloree & Budreau |
| 24 | a/k/a Little Crazy | 20 Park Plaza Suite 1005 Boston, MA 02116 |
| 25 | | |

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508.984.7003

| | | |
|----|---|--|
| 1 | Defendant 38, Edwin Diaz a/k/a Demente | Jonathan Shapiro, Esq. Stern, Shapiro, Weissberg & Garin Suite 500 90 Canal Street |
| 3 | | Boston, MA 02114-2022 |
| 4 | | 617-742-5800 jshapiro@sswg.com |
| 5 | | |
| 6 | Defendant 40, Jairo Perez a/k/a Seco | Elliot M. Weinstein, Esq. 83 Atlantic Avenue Boston, MA 02110 617-367-9334 elliot@eweinsteinlaw.com |
| 7 | | <i>via telephone</i> |
| 8 | | |
| 9 | Defendant 41, Ramiro Guerra a/k/a Camello | James J. Gribouski, Esq. Glickman, Sugarman, Kneeland & Gribouski 11 Harvard St. P.O. Box 2917 Worcester, MA 01613 508-756-6206 mogulesq@charter.net |
| 10 | | <i>via telephone</i> |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | Defendant 42, Manuel Martinez a/k/a Gordo | James N. Greenberg, Esq. 6 Beacon Street Suite 825 Boston, MA 02108 617-557-4444 jimmy@jimmygreenberg.com |
| 15 | | <i>via telephone</i> |
| 16 | | |
| 17 | | |
| 18 | Defendant 43, Alexander Alvarenga | Bruce G. Linson, Esq. Law Office of Bruce G. Linson Howe & Bainbridge Bldg. 240 Commercial St., Suite 3A Boston, MA 02109 617-371-0900 brucelinson@earthlink.net |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | Defendant 44, Manuel Flores-Valle a/k/a Manny | George F. Gormley, Esq. George F. Gormley, P.C. 160 Old Derby Street Suite 456 Hingham, MA 02043 617-268-2999 gfgormley@aol.com |
| 23 | | |
| 24 | | |
| 25 | | |

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508.984.7003

1 Defendant 45,
Heiner Yovani Gomez
2 a/k/a Fiero
3
4 Carlos Jorge Dominguez, Esq.
Suite G3
239 Causeway Street
Boston, MA 02114

617-742-2824
dmngzcarlos@aol.com

5 Defendant 46,
Geiber Acevedo Galvis
6 a/k/a The Columbian
a/k/a Fnu Lnu
7
8 Lenore Glaser, Esq.
Law Office of Lenore Glaser
45 Bromfield Street
Suite 500
Boston, MA 02108
617-753-9988
lglaser@glaserlaw.com

9 Defendant 47,
Carlos Lovato
10
11 J. Thomas Kerner, Esq.
240 Commercial Street
Suite 3A
Boston, MA 02109
617-720-5509
thomas.kerner@comcast.net

12 Defendant 54,
13 Oscar Ramirez-Cornejo
a/k/a Vago
14
15 Leslie Feldman-Rumpler, Esq.
Leslie Feldman-Rumpler, Attorney
at Law
16 Suite 500
90 Canal Street
Boston, MA 02114
617-728-9944
leslie@feldmanrumplerlaw.com

17 Defendant 55,
Mauricio Sanchez
18 a/k/a Tigre
19
20 Liam D. Scully, Esq.
101 Summer Street
Fourth Floor
Boston, MA 02110
781-834-4000
liamdsnelly@aol.com

21 Defendant 56,
Jose Adan Martinez
Castro
22 a/k/a Chucky
23
24 James Michael Caramanica, Esq.
Law Office of James M. Caramanica
8 North Main Street, Suite 403
Attleboro, MA 02703
508-222-0096
caramanicalaw@gmail.com

25 Defendant 58,
Rigoberto Mejia
a/k/a Ninja
Emily R. Schulman, Esq.
Wilmer Hale LLP
60 State Street
Boston, MA 02109
Judy Bond

1 617-526-6077
emily.schulman@wilmerhale.com
2
3 Defendant 59,
Modesto Ramirez
a/k/a Snoopy
4 Vivianne E. Jeruchim, Esq.
Jeruchim & Davenport, LLP
50 Congress Street
Suite 615
Boston, MA 02109
617-720-6047
jeruchim@jdlawyers.com
5

10
11
12
13
14
15
16
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18
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1 COURT CALLED INTO SESSION

2 (3:11:55 P.M.)

3 THE CLERK: June 2, 2016, and we are on the record
4 in Criminal Case No. 15-10338, United States of America
5 verse of Recines-Garcia et al, the Honorable M. Page Kelley
6 and F. Dennis Saylor presiding.

7 Would counsel -- I'm sorry. I don't think --

8 MAG. JUDGE KELLEY: Don't say that.

9 Good afternoon, everyone.

10 MR. LEVITT: Good afternoon, Your Honor.

11 MAG. JUDGE KELLEY: So, I do just want to put on
12 the record that there is one of the defendants here. Can we
13 identify him for the record, please?

14 MS. PARSONS: Yes, Your Honor. Here today is Mr.
15 Jose Andrade who is here present in court with an
16 interpreter.

17 MAG. JUDGE KELLEY: Okay. And that's Inga
18 Parsons, --

19 MS. PARSONS: Yes.

20 MAG. JUDGE KELLEY: -- his attorney.

21 And let's swear in the interpreter.

22 SPANISH INTERPRETER DEBORAH HUACUJA, SWORN

23 THE CLERK: And can you please state your name for
24 the record?

25 THE INTERPRETER: For the record my name is

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1 Deborah Huacuja. Good afternoon.

2 MAG. JUDGE KELLEY: Good afternoon. Thank you,
3 Ms. Huacuja.

4 And good afternoon, Mr. Andrade.

5 So we do have a sign-in sheet that counsel -- who
6 all of whom are present have signed, and some counsel have
7 indicated that they're standing in for other counsel, and so
8 we're going keep that as a record.

9 And also I believe that Ms. Moore has identified
10 the parties who are appearing by phone, and I'd just like to
11 ensure that they're still on the phone. So if you could
12 just identify yourselves once again if you're on the phone?

13 MR. ETTENBERG: Peter Ettenberg for Joel Martinez.

14 MR. WEINSTEIN: Elliott Weinstein for Mr. Perez.

15 MR. GREENBERG: Good afternoon. James Greenberg
16 for Manuel Martinez.

17 MR. HALPERN: Keith Halpern, Rafael
18 Leoner-Aguirre.

19 MR. TUMPOSKY: Michael Tumposky for Mr.
20 Recines-Garcia.

21 MR. GRIBOUSKI: Jim Gribouski for Ramiro Guerra.

22 MAG. JUDGE KELLEY: Okay. So and as for everyone
23 else who is present, we'll just go by the sign-in sheet.

24 And I assume the government is not on that list,
25 so if you would identify yourselves for the record?

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1 MR. LEVITT: Peter Levitt on behalf of the
2 government. Good afternoon.

3 MR. POHL: Good afternoon, Your Honor.
4 Christopher Pohl for the United States.

5 MS. HEMANI: Rachel Hemani for the United States.

6 MAG. JUDGE KELLEY: Good afternoon, and thank you.

7 So this is our second status conference, and I'll
8 be happy to hear any matters that any counsel want to bring
9 up. There are a couple of things that I'd like to cover
10 first, and then I'll hear you afterwards.

11 So first of all, I notice that Marshal Allison
12 Hodgkins is here, and I hope everyone knows her. If you're
13 a defense counsel and you don't know her, you can look at
14 her right now. That's who she is.

15 And she is going to be of your assistance in
16 making sure that your clients get to review discovery in the
17 institutions in which they are held. If your client is held
18 in an institution that the marshals are not holding him in,
19 that could be a problem for all concerned.

20 But Ms. Hodgkins, do you just want to address the
21 group?

22 MARSHAL HODGKINS: If I may, Your Honor?

23 MAG. JUDGE KELLEY: Absolutely.

24 MARSHAL HODGKINS: If issues arise where you find
25 yourself against a brick wall, please contact me directly.

1 I think given the fact that there are so many attorneys,
2 you'd probably inundate each institution if you're all
3 calling down there. But please work out whatever you can;
4 and again, if you find that it's definitely necessary for me
5 to be involved, please contact me.

6 MAG. JUDGE KELLEY: Okay. Thank you. And Ms.
7 Hodgkins has some experience with the various point people
8 at different institutions, so if you're having trouble, she
9 can at least point you to the right person to call.

10 You know, we've really been struggling over the
11 last couple of months with how to get the materials in to
12 the various institutions and make sure that the defendants
13 have the required time they need to look at the materials.
14 Oddly, I can't really figure out whose job it is to ensure
15 that that happens. I'm sure counsel knows that Rule 116.4
16 orders the government to make an extra copy of tape
17 recordings available for defendants who are in custody.

18 The government has really been very helpful
19 working with defense counsel and Mike Andrews in trying to
20 purchase computers, load them up with discovery and get them
21 into Wyatt where I believe 26 defendants are being held.
22 That's a kind of pilot program that's going on right now.

23 Emily Schulman has agreed to purchase the
24 computers. As it turns out, a CJA lawyer has to buy them
25 according to the protocol, so she's agreed to do that. And

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1 as soon as the computers are purchased, the government
2 stands ready to load them up. Mike Andrews, if necessary,
3 will drive them to the institution, and we're going to get
4 that underway I hope within the next two weeks.

5 With regard to the other institutions, if there's
6 a critical mass of defendants at a certain institution, we
7 hope we can buy more computers, if this works out. But in
8 the meantime, it may be your only option is to work with Ms.
9 Hodgkins. And also I think the government would be happy to
10 help you to try to get the materials in to the institution
11 and load it on to an appropriate device. And if all else
12 fails, you can always go there yourself and sit and go over
13 it with the client. Or have a paralegal do that, and I
14 don't think there would be any trouble in getting the funds
15 to have someone else at a lower rate sit with the defendant.
16 We're trying to avoid that just for obvious reasons, but
17 anyway. That's a big concern, and we're working as hard as
18 we can on it.

19 So I would like to ask the government just to
20 state what is the status of the automatic discovery
21 disclosures and when do you anticipate those being finished.

22 MR. LEVITT: Your Honor, we did file a status
23 report yesterday pursuant to the Court's order.

24 But to give sort of the global picture, we've been
25 doing rolling discovery really on a monthly basis, and to

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1 date we've produced approximately 2,293 documents which
2 constitute approximately 15,000 pages, about 9,000 audio
3 clips or items which is hundreds of hours of audio all in
4 Spanish, approximately 1400 audio video files again all in
5 Spanish. That constitutes about a hundred hours. That's --
6 and then approximately 5,000 text messages from one of the
7 -- from CW-1. In terms of where we are, we estimate we're
8 approximately 75 percent through with what is sort of
9 pre-indictment material.

10 The bulk of the remaining material is that audio
11 video. As I said, we've done about a hundred hours. Much
12 of the audio/video is generated from CW-1, and we have a
13 team of paralegals and interns supervised by lawyers that
14 are watching every minute of those audio/video files to see
15 anyplace where the CW-1's face appears, and then that needs
16 to be redacted. So CW-1 is in a car and walks by a car
17 window, and you can see his face. Or goes to the bathroom,
18 and he's in the mirror, and you can see his face. So going
19 through those and redacting the faces has been time
20 consuming, but we've done about a hundred hours, and we
21 think it's probably another fifty hours.

22 There is a large discovery package going out
23 tomorrow. It's the largest one we've done so far. It has
24 to go on a hard drive. That's how big it is.

25 And you know, we suspect that, you know, we're

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1 well along the way to being finished I guess I would say.

2 MAG. JUDGE KELLEY: Can you give -- I'll just say
3 this. To date I have not set a hard deadline, because I
4 think if you're producing things on a rolling basis, people
5 are going to take a while to look at what you've already
6 given them, but I do --

7 I am really concerned that the case is as old as
8 it is, and we don't have a date by which you -- at least a
9 target date for you to complete automatic discovery.

10 So can you give us a date at this time?

11 MR. LEVITT: I would say the next --

12 Two more productions, so it's really 60 days.

13 And, you know, I guess what I would say about it
14 -- a couple of things -- is, you know, to date we've
15 probably received three or four discovery letters in total
16 which we've had no difficulty responding to. We've had some
17 informal requests as well we've had no problem responding
18 to.

19 For many of the defendants, particularly the
20 defendants that are implicated in homicides, we have
21 provided individualized discovery of the most significant
22 evidence involving that particular homicide.

23 So, you know, I guess in -- so my sense is, and
24 obviously the defense lawyers here can speak for themselves,
25 but there hasn't been a good deal of clamoring that I've

1 heard in terms of time, because it is so much material to
2 digest. And we're trying to get out, you know, as much as
3 of the -- the most significant evidence as fast as we can
4 and sort of front loading that.

5 ATTORNEY: Your Honor?

6 MAG. JUDGE KELLEY: Yes.

7 ATTORNEY: I'd like to clamor for one thing sooner
8 rather than later. The stock discovery letter that the
9 government gives us, I don't think we should have to wait 60
10 days to get that. That has some information in it that
11 isn't really in the discovery that's getting produced.

12 MR. LEVITT: We can do that in the next 30 days.

13 ATTORNEY: That's fine.

14 MAG. JUDGE KELLEY: Okay. Okay. So I'm going to
15 wait and hear from defense counsel on that, but your request
16 is June 30 for a formal discovery letter and July 30 for
17 completion of fact discovery.

18 MR. LEVITT: And, Your Honor, the only thing I
19 would qualify that July 30 is the investigation is ongoing,
20 so we're continuing to get material in. But that will be
21 sort of the -- certainly all of the pre-indictment material
22 other than 21-day material.

23 MAG. JUDGE KELLEY: Okay.

24 MR. LEVITT: And, you know, and to the extent
25 there's things post indictment that are relevant that we can

1 produce as well, we will.

2 MAG. JUDGE KELLEY: Okay. And I would just -- I
3 noticed your status report said you've already provided some
4 Jencks.

5 MR. LEVITT: Correct.

6 MAG. JUDGE KELLEY: And so I would just obviously
7 encourage you to keep providing that. That's for Judge
8 Saylor to order, but I'm glad you're doing that.

9 So just one second, Mr. Cunha.

10 So with regard to Docket No. 490, which is
11 Attorney Caramanica's request, they had written you a letter
12 asking for discovery targeted specifically to his client.
13 Has that been responded to?

14 MR. LEVITT: We've left him a message telling him
15 that we are going to do that for him.

16 MAG. JUDGE KELLEY: Okay.

17 MR. LEVITT: So I mean -- you know, and I've
18 talked to several of the defense lawyers about this. You
19 know, we will attempt to accommodate everyone if they want
20 that. Some of them is easier than others. So, you know,
21 the ones -- some folks have contacted us about that, and
22 we've done it, and we'll continue to do so.

23 MAG. JUDGE KELLEY: Okay. Mr. Cunha, yes.

24 MR. CUNHA: Just by way of information, if Mr.
25 Levitt could tell us, is the 75 percent -- is the hard disk

1 comprised within that 75 percent?

2 MR. LEVITT: It is comprised -- yes, it is.

3 MR. CUNHA: Okay. So it's not 75 percent we've
4 got so far.

5 MR. LEVITT: As of tomorrow.

6 MR. CUNHA: As of tomorrow.

7 MR. LEVITT: Correct.

8 MAG. JUDGE KELLEY: Okay. So does any --

9 MR. SALSBERG: Your Honor?

10 MAG. JUDGE KELLEY: Yes.

11 MR. SALSBERG: One quick thing occurs to me. When
12 I hear Mr. Levitt mention that people working for the
13 government are looking at all of this video, I thought he
14 was going to say --

15 MR. WEINSTEIN: Excuse me, Judge. This is Elliott
16 Weinstein. We on the phone can't hear any lawyer speaking
17 other than you, Your Honor.

18 MAG. JUDGE KELLEY: Okay. So we're going to have
19 -- this is John Salsberg, and he's going to speak into a
20 microphone.

21 MR. SALSBERG: Can you hear me, Elliott?

22 MR. WEINSTEIN: Yeah. Thank you.

23 MR. SALSBERG: So I thought Mr. Levitt was going
24 to say we have people from the government looking at the
25 video and keeping track of exculpatory evidence so we could

1 turn that over to defense counsel. I literally did think
2 that's what he was going to say. But that does seem like a
3 -- that if they're going to spend the time to look at all
4 this video and listen to the audio, that perhaps they should
5 be thinking about that as a task, as well as tagging each of
6 the videos with the names of the defendants who are referred
7 to in the video so that we don't have to do all 50 some odd
8 of us what they're doing, which is watching all these
9 videos. If they're watching all of them and listening to
10 all of them, why shouldn't they simply say, okay, this one
11 goes to Pineda, and one goes to whoever else, and we're
12 keeping track of that. It doesn't sound like that it's an
13 assistant U.S. attorney spending their time but probably --

14 Well, I don't know. Is it a paralegal or a law
15 school student?

16 MAG. JUDGE KELLEY: Maybe I'll ask Mr. Levitt to
17 respond to that.

18 MR. LEVITT: Well, we're fully cognizant of our
19 responsibilities with respect to exculpatory evidence, and
20 we'll continue to monitor that.

21 MAG. JUDGE KELLEY: So with the 9,000 audios and
22 videos, do they come with a table of contents?

23 MR. LEVITT: One moment, Your Honor?

24 MAG. JUDGE KELLEY: Ms. Hemani, you can just
25 explain if you want.

1 MR. LEVITT: That would be great. Go ahead and do
2 that.

3 MS. HEMANI: Of the 9,000 audio clips, about 8,000
4 of those are the CW-1's consensual T. III calls, and those
5 -- we'll be producing those tomorrow in a format that allows
6 everybody to sort it by phone number and by date. That's
7 all the information that we have about it.

8 There are also a number of -- there are a number
9 of reports that are being produced. Certainly not about
10 every phone call and certainly not about every meeting, but
11 to the extent that there are reports that talk about CW-1
12 says that on such-and-such a date he met with these people
13 or he spoke to so-and-so on the phone, that's another way to
14 sort of find relevant material.

15 But we don't have an index by the --

16 And to address the point, the audio/video that
17 people are watching to redact, that's in Spanish, and the
18 individuals who are watching it don't speak Spanish.

19 I mean, we're trying to protect the identity of
20 CW-1. So if it were as simple as somebody's watching it and
21 they can keep a list of who appears on it, we would do that,
22 but that's not the case at all.

23 MAG. JUDGE KELLEY: I see. But with regard to --

24 If I could just ask you to clarify something you
25 said? With regard to your writing something out that

1 identifies a call, does it include the names of the
2 participants?

3 MS. HEMANI: To the extent that there are reports

4 --

5 I mean, reports were generated by law enforcement
6 in this case about most of the significant events that
7 occurred over in lengthy investigation and those reports are
8 being produced. Many of them have been produced, and they
9 identify by name I think, usually by their gang name the
10 individual defendant's names, and we're producing everything
11 in a format that's word searchable.

12 MAG. JUDGE KELLEY: So, for example, if you
13 represent someone with a certain nickname, you could run
14 that nickname through and come up with all the calls where
15 the government thinks they're on the call?

16 MS. HEMANI: It wouldn't be all the calls; it
17 would be all the calls that have reports written about them.

18 But you could also search your client's telephone
19 number for those 8,000 telephone calls or any known
20 telephone numbers and identify all the calls that come up
21 with that phone number on it.

22 MAG. JUDGE KELLEY: Okay.

23 MR. LEVITT: So just to give that some further
24 context, I mean so CW-1 has a consensual T. III on his
25 phone. He engages in what he thinks is a significant call

1 with somebody. Typically he's then calling an agent and
2 telling him about the call, and that agent or that trooper,
3 whoever it is, is writing a little report which will say
4 CW-1 reported that he had a call with, you know, X person
5 and, you know, maybe a little bit of the substance of it.

6 So that is a way to sort of back into finding
7 those calls. You know, essentially it's a way of saying
8 these are the calls that in real-time the government viewed
9 as significant. That doesn't mean that there aren't others,
10 right, but --

11 MAG. JUDGE KELLEY: So when you send out your
12 discovery tomorrow, will it include a cover letter that
13 explains all of the features of the discovery to defense
14 counsel?

15 MR. LEVITT: Yeah, and I think it has been
16 explained in the past in terms of --

17 MAG. JUDGE KELLEY: Okay.

18 MR. LEVITT: I mean, so one of the issues just to
19 give you an example was we sent out the consensual Title III
20 calls, and some of the -- we got a couple of lawyers who
21 said, gee, are they searchable in any way? And we talked to
22 our tech person, and they said no. And so we said, well,
23 why don't we make it in a searchable fashion, and so we're
24 reproducing that now tomorrow. That's what Ms. Hemani's
25 referring to.

1 So the consensual T. III calls that were
2 previously produced, and we've advised the defense lawyers a
3 few weeks ago that we were going to be doing this, are now
4 sortable by telephone number. So they can ask their client
5 what was your telephone number during this time period.
6 They can search that telephone number and pull up all the
7 calls between that telephone number and the cooperating
8 witness.

9 MAG. JUDGE KELLEY: So if there is a mention of a
10 certain defendant on a call but it's between two people who
11 are not him and they're just talking about his involvement
12 in something or as in detention hearing they are mentioning
13 that a certain person was at a meeting, et cetera, how would
14 that person's defense counsel figure out to listen to that
15 call?

16 MR. LEVITT: So in the first instance they would
17 see if it's in a report. As I said, I mean, with --

18 MAG. JUDGE KELLEY: So they search their client's
19 name through the reports.

20 MR. LEVITT: Correct. So the discovery -- the
21 reports that are produced are searchable by name. So they
22 would search their client's street name, their MS-13 name.

23 And, you know, as I said, I mean, I think there
24 are, you know, most of the significant calls -- at least the
25 ones that were deemed significant by the government at the

1 time there is some sort of accompanying report.

2 MS. HEMANI: There's also we produced -- I don't
3 know how many, but there are some draft translations of some
4 of the calls and some of the meetings and some summary
5 translations which we've produced, and those also to the
6 extent we could identify the individual who participated in
7 it, those are searchable too. And we're continuing to
8 prepare and work on transcriptions of some of the key
9 meetings, and we will be producing those as we have them.

10 MAG. JUDGE KELLEY: Okay. So just on this topic,
11 yes, Ms. Griffen? Does anyone have a comment or yes? Yes.

12 MS. GRIFFIN: Yes, and I'm going to move to the --
13 Joan Griffin.

14 I do just want to say I'm one of the people that
15 sent in one of those discovery letters prior to the most
16 recent one, and while some discovery has been produced I was
17 mainly asking for the government to pinpoint the discovery
18 that referenced or implicated my client.

19 I actually believe, for example, that on those
20 hours and hours of CW-1 calls he is not a participant at
21 all, and I would expect he's mentioned very little if at
22 all.

23 So rather than my trying to listen to all of this
24 in Spanish to figure that out, I have asked the government
25 to tell me if he's either participating in any of those

1 calls or is mentioned in any of those calls. So they have
2 not been able to do that yet. I understand that they're now
3 saying the calls are searchable by phone number and date,
4 but they're not searchable by name of defendant.

5 Now, the transcripts -- we have received a few
6 transcripts, and those do identify the participants, so
7 that's fine. You know, that would work.

8 But in general, if you have some of these
9 defendants such as mine who are involved in very --
10 apparently very limited events and perhaps no calls with the
11 CW-1 who seems to have been a member of one of the
12 particular cliques here but -- and talks to those people but
13 doesn't talk to everyone else, obviously it would be helpful
14 and efficient if the government gave us a little package and
15 said this is what we've got against your client.

16 Which has been done in other cases; and in
17 particular, the NECC case that I represent a defendant in.
18 When they produced discovery to us, it was organized by
19 folder, and it had a folder called "Indictment Docs," and
20 for each defendant, you know, you had the documents as to
21 your particular involvement. And for someone who's a small
22 defendant in particular, it's very helpful to be able to
23 start with that and not just have, you know, hours and hours
24 and hours of tapes.

25 This discovery is not organized like that. The

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1 only index we've received I think identifies the major
2 murders, but for example doesn't mention my client at all in
3 any of the indexed materials. So that's not a help to me.

4 So the short answer is I think, you know, we're
5 trying to work with the government, but some of us are
6 clamoring, and at this point I would expect that there will
7 be a motion filed on this issue if we can't get more
8 pinpointed discovery.

9 And I told the government flat out I'm
10 CJA-appointed counsel. I'm going to have to file a budget,
11 and the Court isn't going to want to see a budget for me to
12 just sit and listen to hours and hours of stuff when they
13 know that I'm not in 99 percent of it.

14 MAG. JUDGE KELLEY: Okay.

15 MR. LEVITT: Well, so, you know, we'd be happy to
16 provide Ms. Griffin with -- as we have with many of
17 defendants who've asked -- with a packet of materials
18 concerning her client.

19 You know, we can not say this is everything about
20 your client, because there are, you know, thousands of --
21 well, there's hundreds of hours of consensual T. III
22 conversations.

23 I agree with Ms. Griffin. I think it's unlikely
24 that those are going to be involving her client, because the
25 CW was involved, in particular, with one clique, and her

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1 client was in a different clique, and her client was in jail
2 for a good deal of the time. So she kind of has a short
3 window when her client is out. So we can certainly work
4 with her to provide, you know, some sort of individualized
5 discovery.

6 As I've said, her client is not implicated in one
7 of the murders that are currently charged or listed, so we
8 have -- we have focused primarily in terms of individualized
9 discovery on those to start, because those folks have been
10 asking since the beginning. But we're sort of done with
11 that largely, so we can certainly work with her to try to
12 help her on that.

13 MAG. JUDGE KELLEY: I do think for some defendants
14 who are mentioned infrequently not -- just giving them the
15 global discovery is not really giving them the discovery.
16 They need to know what is the evidence against me without
17 their lawyer listening to 9,000 hours or whatever.

18 MR. LEVITT: It's true. There's a handful of
19 defendants like that. And, you know, one thing we're happy
20 to sit down with them in the first place and sort of walk
21 through the evidence that we have to date. You know, sort
22 of what we see as the case against them, and to help try to
23 pinpoint them to time periods. If they were at a particular
24 clique meeting, letting them know that sort of thing.

25 MAG. JUDGE KELLEY: Okay.

1 MR. LEVITT: As I said, I think we've focused
2 primarily on the murders to date, but I think we're sort of
3 past that point and can work towards some of the other
4 defendants.

5 MAG. JUDGE KELLEY: Okay. Mr. Cunha, did you have
6 something?

7 MR. CUNHA: I think Mr. Bourbeau wanted to go
8 first.

9 MAG. JUDGE KELLEY: Mr. Bourbeau?

10 MR. CUNHA: I cede to Mr. Bourbeau.

11 MAG. JUDGE KELLEY: Okay. Yes.

12 MR. BOURBEAU: Yes, good afternoon, Your Honor.

13 First of all, I represent Mr. Edwin Gonzalez who
14 has been charged with two homicides and an attempted murder.
15 And I very much appreciate the government's informal
16 communications, and I've had a number of them.

17 I am concerned with both the timing of the
18 discovery and the substance of the discovery. What I can
19 tell the Court is right now as to I only have -- and I'm
20 hopeful that tomorrow's production will be more fruitful
21 than what I've received so far. Only in the last production
22 did I receive anything involving one of the homicides, and
23 that production --

24 And I can tell you from experience in homicide
25 cases, is it's just a fraction of the materials that are in

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1 any typical homicide file. There's very few crime scene
2 reports, which is typical Rule 16 materials. There's very
3 few actual substantive reports concerning the homicide
4 investigation. There are a few statements that, you know,
5 came up surrounding -- I'm speaking particularly as to the
6 Martinez homicide which was a State Police investigation.

7 But a State Police investigation, for example, has
8 a case jacket. It identifies hundreds of items and where
9 those items are. And I've mentioned that to the government
10 I don't have that case jacket, and I don't have what items
11 go along with it, which would be typical Rule 16 materials.
12 And that's just that one homicide.

13 Finally, as to the attempted murder, after a
14 number of calls I finally got I believe 12 pages on the
15 attempted murder, which again is simply an incident report,
16 which is a one-paragraph summary and a bunch of just not
17 identifying information.

18 That is not what is in a typical State file, and
19 these are State cases that are being tried by way of the
20 racketeering acts.

21 So, you know, I do ask the government, and I ask
22 the Court to help us implore the government to really turn
23 over as much of the files as they can.

24 And again, I can understand that this is a large
25 undertaking, but they chose to indict it in the way they

1 have, and they chose to proceed in the way they have. But
2 we're now four months out, and I'm still yet to receive on
3 the January 10 one single document other than some brief
4 summaries that were provided. And that --

5 You know, unfortunately, the government is already
6 filing motions and attaching documents that we don't have.
7 I just filed a request for an extension on that.

8 So again, I'm just --

9 MAG. JUDGE KELLEY: I saw that, and I'll grant
10 that request.

11 MR. BOURBEAU: Yeah. Again, I'm just imploring
12 the government to turn over or at least make inquiries of
13 the State. You know, and I understand there's State
14 prosecutors and what part of the file they may have gotten
15 and may not have gotten at this time.

16 MAG. JUDGE KELLEY: Okay.

17 MR. BOURBEAU: But to turn that over, because it
18 really is -- this is not typical cases that you would see in
19 a State case.

20 MAG. JUDGE KELLEY: Okay. Thank you, sir.

21 MR. LEVITT: So I think Mr. Bourbeau is --

22 And I wish he'd asked me about this. I would have
23 told him.

24 -- is under a misapprehension as to how this case
25 developed.

1 We didn't adopt these two murders nor this
2 attempted murder from the State. These are federal
3 investigations. The crime scene at the day of the scene is
4 the State responding to it, and then it was quickly a
5 federal investigation. Okay? So he's not going to get what
6 he would normally expect to get from a State homicide
7 investigation. Okay?

8 The attempted murder that he's mentioning was not
9 charged in State court, so there is no State file to provide
10 him. Okay?

11 So we have provided information on both, you know,
12 the --

13 Back in March I provided Mr. Bourbeau with the
14 most important evidence of his client's involvement in the
15 murder of Christopher Delacruz: the tape recorded
16 statements of his client to the cooperating witness
17 admitting at length to the murder, describing in detail how
18 he murdered Christopher Delacruz, and including the pictures
19 from the car of his client while he's talking about the
20 murder. I also included the summaries of the other
21 individuals who were involved in the murder. That at the
22 end of the day will be the most important evidence with
23 respect to that murder.

24 MAG. JUDGE KELLEY: Okay.

25 MR. LEVITT: Mr. Bourbeau -- just to -- you know,

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1 he had asked us about the photos -- crime scene photos and
2 that sort of thing, and we email him that -- this was two
3 weeks ago -- that this next discovery coming out tomorrow
4 will have the bulk of the media production for that
5 Christopher Delacruz murder which is all of the surveillance
6 tapes from the scene, the crime scene photos, that sort of
7 thing. Over a thousand media files.

8 MAG. JUDGE KELLEY: What about the -- do you have
9 other kinds of typical homicide materials such as lab
10 results and that type of thing?

11 MR. LEVITT: So the lab results that we attached
12 to the buccal swab motion we got Friday.

13 MAG. JUDGE KELLEY: Okay. But those are -- when
14 are those going to be shared?

15 MR. LEVITT: Those can go out -- we can get them
16 out next week. I mean, we literally got them Friday. We
17 were in the process of -- we were about to file a buccal
18 swab motion. Those came in, and so we just attached it to
19 the motion and filed it.

20 MAG. JUDGE KELLEY: Okay.

21 MR. LEVITT: But those sort of things. You know,
22 the autopsy reports. Those sort of things. Some of that
23 has already gone out. Others are going out tomorrow.

24 MAG. JUDGE KELLEY: Okay. Yes, Mr. Cunha?

25 MR. CUNHA: I'd just like to endorse what Joan

1 Griffen said about organization.

2 I'm also on the NECC case, and we in that case
3 don't think the organization sufficed, and it was far more
4 than what we have here and with respect to requesting
5 pinpoint discovery, which I have not done. I'm waiting to
6 see the discovery first to figure it out, and then I'll make
7 my request.

8 But this is a conspiracy indictment, so I am very
9 concerned about these 9,000, you know, recordings. The
10 government does not have to prove that my client committed
11 the predicate acts --

12 MAG. JUDGE KELLEY: Sure.

13 MR. CUNHA: -- that they said he did.

14 MAG. JUDGE KELLEY: I know all about that.

15 MR. CUNHA: I assumed you would.

16 MAG. JUDGE KELLEY: I know what you're talking
17 about.

18 So let me just say this. Rather than have every
19 defense counsel go through every shred of evidence in the
20 case, I'm going to ask Mr. Cunha and Ms. Griffin and whoever
21 else, but especially those two, to after you receive the
22 discovery tomorrow, to look at it, and then to sit down with
23 the government in person and talk about either how could
24 this be better organized. Or if the government is going
25 through things and translating things and organizing things,

1 perhaps they could do it in such a way that they can share
2 it with you as they do it and just how could it be organized
3 optimally. And if the government is not able to help you,
4 then we should get together, a critical group of defense
5 lawyers, to do that.

6 You can have someone perhaps go through it and
7 organize it at least in a preliminary fashion and save
8 yourselves all a lot of time and trouble.

9 So let's just try that. And we don't have to wait
10 until the next hearing. I'm happy to convene another
11 conference if you want a conference to talk about it, or you
12 have some motion to make or whatever.

13 Because it's in everyone's interest to get this --
14 to communicate about this and get it organized in such a way
15 that people can do their work. Okay?

16 I mean, another whole can of worms is when Mr.
17 Cunha tells his client I want you to listen to this
18 particular call or watch this particular video, will his
19 client in the institution be able to figure out where it is,
20 and if he can pull it up and listen to it?

21 MR. CUNHA: Right. And that's a concern that we
22 have. Thank you. I had forgotten to mention that.

23 MAG. JUDGE KELLEY: Well, the government --

24 MR. CUNHA: There is an index. I'm not so clear
25 that my client has the wherewithal to use that index.

1 MAG. JUDGE KELLEY: Well, okay. Then that's
2 another thing to be looking at.

3 The government is going to be -- they have their
4 IT poised and ready to load up these computers with the
5 information so that people can access it in the institutions
6 --

7 And once again, if there was some -- if there was
8 some organization to the way in the discovery itself, it
9 would facilitate --

10 MR. CUNHA: And when you're talking about again
11 9,000 as a number, it's a lot more likely that my client can
12 get through that than I can. First of all, I don't speak
13 Spanish, but --

14 MAG. JUDGE KELLEY: Well, the government needs to
15 go through those things. You need to go through those
16 things. Everyone needs it to be organized in such a way
17 that they can search it and find things easily, et cetera.
18 And hopefully you can cooperate on that, so.

19 Okay. Moving right along. You know, this is
20 taking quite a while.

21 If you need a case budget, which I think is
22 \$40,000 or more that you anticipate billing, you must work
23 one out with Mike Andrews.

24 And he's having a meeting on June 13. I don't
25 know the time. Does anyone know the time?

1 ATTORNEY: It has not been established yet as far
2 as I know. He's looking into --

3 MAG. JUDGE KELLEY: Okay. Peter Parker thinks
4 it's at two, but if --

5 ATTORNEY: Oh, excuse me. It's at three o'clock.
6 That's right. It is at three o'clock, yes.

7 MAG. JUDGE KELLEY: Okay. So he's out of town
8 today, so he couldn't be here. But if you can't make the
9 three o'clock case budgeting meeting, just schedule a
10 tutorial with him, and he'll be happy to help you. But
11 you've got to get a case budget going.

12 I'll let Mr. Bourbeau take the lead on this. How
13 much time would you like to respond to Document No. 500, the
14 buccal swab motion?

15 MR. BOURBEAU: Well, if all the information is
16 being provided tomorrow and I guess since they just received
17 this information, it will be provided following that.
18 Again, within 30 -- even 30 days if they're going to be
19 provided immediately, if it's going to be perhaps 45 days.

20 MAG. JUDGE KELLEY: Why don't I just say anyone
21 who wants to object to that should object by July 29.

22 Is that going to throw the government off if the
23 motion is pushed out that far? Is there some urgency to
24 that motion?

25 MR. LEVITT: No. I mean, all it means is --

1 The answer is no, but just in full disclosure what
2 it means is, you know, the lab is waiting. The Boston
3 Police lab is ready to make comparisons. There's a great
4 deal of forensic evidence in this case. More than they've
5 experienced is what they've expressed to us in terms of --

6 And so and they've already just -- you know,
7 without even having buccal swab and maker case prints,
8 they've already gotten hits on -- you know, in murder cases.
9 So it just means that it will take longer for the forensic
10 review.

11 MAG. JUDGE KELLEY: Why don't we say we'll set a
12 deadline of July 11. And if you need more time to object to
13 it, you can file a motion for extension of that deadline,
14 but let's --

15 Is that all right with you?

16 MR. BOURBEAU: That's fine.

17 Just so the Court's aware, we'll also from what I
18 see from the buccal swab motion, they have requested
19 destructive testing in their request. So we'll need to
20 acquire by that time, as well, DNA experts who will have to
21 go and observe. Which I believe the BPD labs allows the
22 observation. State Police does not. But we'll need to
23 acquire those experts to make the observation during the
24 initial testing and breaking down of material.

25 MAG. JUDGE KELLEY: Okay. Let's say by July 11

1 you can file a substantive objection to the motion, and then
2 also by that date if you have an expert -- whether you have
3 the expert or not, you can notify the Court I want an expert
4 to go, and then you can work that out with the government,
5 and the government --

6 I'm going to order the government now not to do
7 any testing until we know what is happening.

8 So I just draw everyone's attention to Local Rule
9 116.3(h) which says that in multi-defendant cases the
10 defense counsel are to try not to duplicate motions. And it
11 actually requires you all to confer, but I'm not going to
12 impose that requirement.

13 But I think, for example, if someone's having a
14 DNA expert go --

15 It also says -- it relieves you of the necessity
16 of joining in a motion. So you could just talk to Mr.
17 Bourbeau and perhaps not duplicate that unless you want to.
18 If you think there's a conflict is going to arise with the
19 expert or something, then you can do as you wish. But if
20 you can piggyback on someone's expert, that's perfectly
21 acceptable, and I'll let you work that out among yourselves.

22 So is there anything else at this time? Yes?

23 ATTORNEY: I'd ask, Your Honor, if the
24 government's willing to give us a list of all the particular
25 phone numbers that they attribute to particular defendants,

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1 that would expedite the search. I don't think it harms the
2 government in any way. And we're also assuming that each
3 defendant recalls the phone number that he used at a
4 particular time.

5 MAG. JUDGE KELLEY: Or that he's even -- right, or
6 --

7 There are a lot of possibilities there.

8 But could you do that?

9 MR. LEVITT: Yeah, we could try to do that.

10 MAG. JUDGE KELLEY: Okay.

11 ATTORNEY: Thank you.

12 MAG. JUDGE KELLEY: Okay. So anything else? Yes,
13 sir.

14 MR. NORKUNAS: Judge, I think that there's been a
15 number of detention hearings held throughout here, and I
16 think we would like the transcripts potentially of those.
17 And rather than have the -- you know, all of us or many of
18 us file for a separate transcript of that, if those could be
19 ordered, then we could have available a transcript to
20 everybody.

21 MAG. JUDGE KELLEY: Okay. So Ms. --

22 MR. NORKUNAS: One task, and everybody gets a
23 copy.

24 MAG. JUDGE KELLEY: Okay. So Mr. Norkunas just
25 for the benefit of the people who are on the phone, Mr.

1 Norkunas is asking can we have transcripts of all the
2 various detention hearings and have them made available.
3 And I don't see why not rather than having everyone
4 requesting them.

5 ATTORNEY: And the status conference today, Your
6 Honor? Status conferences as well.

7 MAG. JUDGE KELLEY: Okay. So I do just have one
8 last matter to raise with the government; which is, do you
9 have a timetable for dividing up the defendants for trial
10 purposes?

11 MR. LEVITT: I don't have -- we don't have a
12 timetable. We have thought about it in response to the
13 question at the last status conference, sort of a framework
14 for it.

15 But even sort of as a precursor to that, we've had
16 a great deal of approaches from defendants about pleading,
17 and so there's a lot of those conversations occurring
18 already. And so, you know, once --

19 We'll have a better sense once more of that has
20 played through. We expect a good deal of that to happen in
21 the next couple months.

22 In terms of a frame --

23 So, you know, some of the framework will depend on
24 who's left at a certain point.

25 Certainly the drug defendants who are not -- who

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1 are alleged to be suppliers to MS-13 or associates of MS-13
2 is a separable group that could in theory be tried separate.

3 When it comes to the remaining MS-13 defendants,
4 there are ways to separate them. You know, it raises a
5 question of whether that would be efficient to do it.

6 But if, you know, at the end of the day there was
7 a certain number beyond which the Court would say, you know,
8 we need to separate these, certainly the separating by
9 murders can be done. You know, there are certain defendants
10 who are implicated in murders that are related either in
11 time or in context or clique that could be done together.
12 And, you know, in theory all the murders could be done
13 together and another group separately.

14 The reason I raise the efficiency question is
15 there would be a tremendous amount of duplication in terms
16 of testimony because obviously the RICO conspiracy element
17 will be a significant aspect of any trial. So there would
18 be a good deal of duplicative testimony.

19 But, you know, it could be done, and it really
20 will come down at the end of the day to the numbers I think.

21 JUDGE SAYLOR: If I may join in? I don't have any
22 firm ideas on this topic. I note that Judge Chesler in New
23 Jersey just concluded a eight-defendant MS-13 trial. Eight
24 defendants which took 16 weeks to try. And if I extrapolate
25 that even a little bit, it gives me quite a bit of pause in

1 terms of what these trials -- or this trial might look like.

2 And we can't sever without duplication, and we

3 can't try everyone together without huge inefficiencies, as

4 well. There's going to be no perfect solution here.

5 I want to make sure that you're thinking about it.

6 I think experience would suggest that the people most likely

7 to go to trial are the most major and the most minor

8 players, and it's possible that minor players might be spun

9 off in drug or gun charges or whatever that might be

10 handled, you know, efficiently or in advance of the more

11 significant cases. I don't know. It's an abstract idea.

12 Of course it's going to depend on who pleads and in what

13 cases and so forth.

14 But we also -- we need to have some structure at

15 some point going forward. We can't assume that everyone's

16 going to plead or most people are going to plead or any

17 particular defendant's going to plead.

18 And I lie awake at night looking at the ceiling

19 sometimes thinking about what 2017 and 2018 are going to

20 look like for me personally, and in you're in my dreams, Mr.

21 Levitt. So I just want you to make sure that you are

22 focused on that as well as counsel; you know, if your

23 client's going to go to trial, what that's going to look

24 like and in what time frame.

25 MR. LEVITT: Just to add to that, Judge, you know,

1 we are -- we're also in contact with the prosecutors in New
2 Jersey as well as the ones in Virginia that completed a
3 trial recently, an MS case and North Carolina. So, you
4 know, we're trying to learn from them in terms of what their
5 experiences were and where they think the inefficiencies
6 were and, you know, to try to see what we can do to make
7 this process as smooth as possible.

8 JUDGE SAYLOR: Otherwise, I don't have anything to
9 add except that it seems like Mr. Parker from where he's
10 sitting ought to be put under oath and be cross examined by
11 someone.

12 MAG. JUDGE KELLEY: So, I did also just want to
13 bring to everyone's attention that Judge Saylor did order
14 interim billing for all CJA counsel, and I think today was
15 one date by which you can bill.

16 And you don't need to file any motions for
17 interpreters. There's a standing order of the First Circuit
18 that says if your client requires an interpreter in court,
19 you can expend reasonable funds for interpreters to see the
20 client so that it's not necessary to get advance permission
21 for interpreter's funds.

22 And I would like to have the next --

23 JUDGE SAYLOR: Just on that, if you have any
24 questions about any of that, your first contact ought to be
25 Mike Andrews, okay, who's very involved in this and can help

1 guide you through that.

2 I mean, I'm getting these vouchers. You know,
3 they're coming fast and furious -- and that's fine --
4 including a lot of interpreters which are, you know, easy
5 vouchers to approach.

6 But as you're figuring out how to go forward as
7 well as I'm, you know, beginning to struggle through this,
8 Mike Andrews is a resource of the Court that can help with
9 all of that.

10 MR. HALPERN: Can I ask a question? Steven
11 Halpern.

12 MAG. JUDGE KELLEY: Yes.

13 MR. HALPERN: I raised this at the last hearing.
14 Is there any sort of plan being considered to deal with
15 interpreters and --

16 I mean, I have to say I listened to this, and
17 there's almost like *Alice in Wonderland* aspect to it talking
18 about the burden of going through thousands of hours of
19 discovery. It's not really much of a burden for me, because
20 I can't understand any of it. You know, to talk about it as
21 though the production of stuff in a language that virtually
22 none of us can understand unindexed, so this notion that if
23 we just spend the time to review, we'll find the stuff that
24 relates to our clients, I mean just is absurd.

25 And the phone call -- you know, tracking this by

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1 phone numbers? I mean, you know, these guys change phone
2 numbers every other week. The notion that they're going to
3 remember -- I just don't --

4 But my main issue was whether there's any thought
5 to what the plan is to get things translated, to get
6 discovery translated.

7 MR. CUNHA: In both languages.

8 MAG. JUDGE KELLEY: In both languages Mr. Cunha
9 just said.

10 Well, Mr. Halpern, I'm going to task you with
11 having a sit-down with the government to talk about this,
12 and I think previously Michael Tumposky also was going to
13 spearhead an effort to prevent counsel from duplicating
14 their efforts to have things translated.

15 So I assume the government will be translating
16 since we have English-speaking juries here a lot of these
17 phone calls. And I think the point you raise is an
18 excellent one, and we should have addressed it.

19 And so if you don't mind, you can work on that.
20 I'm not trying to punish you for bringing that up, but I
21 just think we need a solution. So --

22 MR. TUMPOSKY: Your Honor --

23 Michael Tumposky here.

24 So, yeah, we had --

25 And I can talk to Mr. Halpern I think it was off

1 line.

2 But, you know, I have a paralegal who has been
3 appointed for this purpose, and so there is a mechanism.
4 It's not totally finalized, but basically it's on request
5 through her to have things sent to translate it and then
6 distributed to counsel.

7 MAG. JUDGE KELLEY: Okay. Well, --

8 MR. TUMPOSKY: I think one aspect of it anyway.

9 MAG. JUDGE KELLEY: Yeah, I think that's one
10 aspect of it.

11 But if the government is going to be going through
12 materials and translating them anyway, if -- perhaps they
13 could cooperate with defense counsel in letting them know
14 what their deadlines are for completing those things, and
15 maybe then defense counsel don't have to do it all
16 themselves. And if defense counsel do do it, then perhaps
17 through Mr. Tumposky's efforts they can share that.

18 So maybe what I'll ask you, Mr. Halpern, is just
19 to talk to Mr. Tumposky and see how this is going along.

20 And Mr. Tumposky, if you don't mind staying in
21 communication with the rest of the defense lawyers so that
22 people who don't speak Spanish know what's happening in this
23 regard.

24 MR. TUMPOSKY: Sure.

25 MAG. JUDGE KELLEY: Okay. So here's what I

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1 propose that we do is have the next status conference on
2 September 8 which is 90 days away, and I just want to ask
3 first if there's anyone who objects to my excluding the time
4 between today and September 8 on behalf of their client,
5 would you speak up.

6 MS. PARSONS: I do, Your Honor.

7 MAG. JUDGE KELLEY: Oh, okay.

8 MS. PARSONS: On behalf of Mr. Andrade.

9 MAG. JUDGE KELLEY: Okay. So I'm going to find --
10 Thank you very much. 18 USC 3161(h) (7)(A) (B) (ii)
11 And I'm going to find that under 18 USC 3161(h) (7)
12 (A) and (H), (B) (ii), that this is a complex case and that
13 the time is necessary for the parties to get their cases in
14 order.

15 However, if, Ms. Parsons, you want to object after
16 September 8, I'll consider the status of discovery, et
17 cetera, and we can send you up.

18 MS. PARSONS: Okay.

19 MAG. JUDGE KELLEY: And obviously anytime you want
20 to ask for a speedy trial, you can do so.

21 MS. PARSONS: Thank you, Your Honor.

22 MAG. JUDGE KELLEY: But as of now, we'll exclude
23 the time for everyone until September 8, and in the meantime
24 --

25 THE CLERK: Excuse me, Judge. What time on

1 September 8?

2 MAG. JUDGE KELLEY: Three o'clock. I'm sorry.

3 Thank you.

4 In the meantime, we'll have the discovery dates
5 that we set before: June 30 for the discovery letter, and
6 July 29 to wrap up automatic discovery, and then by July 11
7 we'll have objections to the buccal swab motion and any
8 notifications of defendant's experts needing to be present
9 at destructive testing.

10 And if we require a hearing after that date, I'll
11 set a date, and it will appear on ECF, and whoever wants to
12 can attend. It obviously won't be mandatory that you
13 attend.

14 Okay. Anything else from anyone?

15 Yes, Mr. Norkunas.

16 MR. NORKUNAS: (Inaudible) to ask Judge Saylor.
17 Those of us who may have not put in the original bill for
18 June 1, does the Court agree to give us any leeway for that
19 first bill? I know it's been ordered by June 1.

20 MAG. JUDGE KELLEY: For interim billing?

21 MR. NORKUNAS: Yes.

22 JUDGE SAYLOR: Off the record.

23 (Off the record discussion.)

24 MAG. JUDGE KELLEY: Okay. Thank you all very
25 much.

1 ATTORNEY: Thank you, Judge.

2 (Court adjourned at 4:08:41 p.m.)

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July 11, 2016

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